

**ASSEMBLY BILL**

**No. 1867**

---

**Introduced by Assembly Member Patterson**  
**(Coauthor: Assembly Member Harkey)**  
(Coauthors: Senators Cannella, Fuller, Huff, and Vidak)

February 19, 2014

---

An act to amend Sections 4584 and 4584.5 of, and to add Section 4584.1 to, the Public Resources Code, relating to forestry.

LEGISLATIVE COUNSEL'S DIGEST

AB 1867, as introduced, Patterson. Timber harvest plans: exemption: reducing flammable materials.

The Z'berg-Nejedly Forest Practices Act of 1973 prohibits a person from conducting timber operations, as defined, unless a timber harvesting plan prepared by a registered professional forester has been submitted to the Department of Forestry and Fire Protection. The act authorizes the State Board of Forestry and Fire Protection to exempt from some or all of those provisions of the act a person engaging in specified forest management activities, including, the cutting or removal of trees in compliance with existing law relating to defensible space that eliminates the vertical continuity of vegetative fuels and the horizontal continuity of tree crowns for the purpose of reducing flammable materials and maintaining a fuel break for a distance of no more than 150 feet on each side from an approved and legally permitted structure, as provided.

This bill would instead provide that the act does not apply to a person engaging in the cutting or removal of trees in compliance with existing law relating to defensible space that eliminates the vertical continuity of vegetative fuels and the horizontal continuity of tree crowns for the

purpose of reducing flammable materials and maintaining a fuel break for a distance of no more than 300 feet on each side from an approved and legally permitted structure, as provided. The bill would also authorize the landowner to sell the timber that is cut and removed pursuant to this provision. The bill would require the board to adopt emergency regulations necessary to implement the above provision.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 4584 of the Public Resources Code is  
2     amended to read:  
3     4584. Upon determining that the exemption is consistent with  
4     the purposes of this chapter, the board may exempt from this  
5     chapter, or portions of this chapter, a person engaged in forest  
6     management whose activities are limited to any of the following:  
7     (a) The cutting or removal of trees for the purpose of  
8     constructing or maintaining a right-of-way for utility lines.  
9     (b) The planting, growing, nurturing, shaping, shearing, removal,  
10    or harvest of immature trees for Christmas trees or other ornamental  
11    purposes or minor forest products, including fuelwood.  
12    (c) The cutting or removal of dead, dying, or diseased trees of  
13    any size.  
14    (d) Site preparation.  
15    (e) Maintenance of drainage facilities and soil stabilization  
16    treatments.  
17    (f) Timber operations on land managed by the Department of  
18    Parks and Recreation.  
19    (g) (1) The one-time conversion of less than three acres to a  
20    nontimber use. A person, whether acting as an individual or as a  
21    member of a partnership, or as an officer or employee of a  
22    corporation or other legal entity, shall not obtain more than one  
23    exemption pursuant to this subdivision in a five-year period. If a  
24    partnership has as a member, or if a corporation or other legal  
25    entity has as an officer or employee, a person who has received  
26    this exemption within the past five years, whether as an individual  
27    or as a member of a partnership, or as an officer or employee of a  
28    corporation or other legal entity, then that partnership, corporation,  
29    or other legal entity is not eligible for this exemption. "Person,"

1 for purposes of this subdivision, means an individual, partnership,  
2 corporation, or other legal entity.

3 (2) (A) Notwithstanding Section 4554.5, the board shall adopt  
4 regulations that do all of the following:

5 (i) Identify the required documentation of a bona fide intent to  
6 complete the conversion that an applicant will need to submit in  
7 order to be eligible for the exemption in paragraph (1).

8 (ii) Authorize the department to inspect the sites approved in  
9 conversion applications that have been approved on or after January  
10 1, 2002, in order to determine that the conversion was completed  
11 within the two-year period described in subparagraph (B) of  
12 paragraph (2) of subdivision (a) of Section 1104.1 of Title 14 of  
13 the California Code of Regulations.

14 (iii) Require the exemption pursuant to this subdivision to expire  
15 if there is a change in timberland ownership. The person who  
16 originally submitted an application for an exemption pursuant to  
17 this subdivision shall notify the department of a change in  
18 timberland ownership on or before five calendar days after a change  
19 in ownership.

20 (iv) The board may adopt regulations allowing a waiver of the  
21 five-year limitation described in paragraph (1) upon finding that  
22 the imposition of the five-year limitation would impose an undue  
23 hardship on the applicant for the exemption. The board may adopt  
24 a process for an appeal of a denial of a waiver.

25 (B) The application form for the exemption pursuant to  
26 paragraph (1) shall prominently advise the public that a violation  
27 of the conversion exemption, including a conversion applied for  
28 in the name of someone other than the person or entity  
29 implementing the conversion in bona fide good faith, is a violation  
30 of this chapter and penalties may accrue up to ten thousand dollars  
31 (\$10,000) for each violation pursuant to Article 8 (commencing  
32 with Section 4601).

33 (h) Easements granted by a right-of-way construction agreement  
34 administered by the federal government if timber sales and  
35 operations within or affecting these areas are reviewed and  
36 conducted pursuant to the National Environmental Policy Act of  
37 1969 (42 U.S.C. Sec. 4321 et seq.).

38 ~~(i) (1) The cutting or removal of trees in compliance with~~  
39 ~~Sections 4290 and 4291 that eliminates the vertical continuity of~~  
40 ~~vegetative fuels and the horizontal continuity of tree crowns for~~

~~the purpose of reducing flammable materials and maintaining a fuel break for a distance of not more than 150 feet on each side from an approved and legally permitted structure that complies with the California Building Standards Code, when that cutting or removal is conducted in compliance with this subdivision. For purposes of this subdivision, an “approved and legally permitted structure” includes only structures that are designed for human occupancy and garages, barns, stables, and structures used to enclose fuel tanks.~~

~~(2) (A) The cutting or removal of trees pursuant to this subdivision is limited to cutting or removal that will result in a reduction in the rate of fire spread, fire duration and intensity, fuel ignitability, or ignition of the tree crowns and shall be in accordance with any regulations adopted by the board pursuant to this section.~~

~~(B) Trees shall not be cut or removed pursuant to this subdivision by the clearcutting regeneration method, by the seed tree removal step of the seed tree regeneration method, or by the shelterwood removal step of the shelterwood regeneration method.~~

~~(3) (A) Surface fuels, including logging slash and debris, low brush, and deadwood, that could promote the spread of wildfire shall be chipped, burned, or otherwise removed from all areas of timber operations within 45 days from the date of commencement of timber operations pursuant to this subdivision.~~

~~(B) (i) All surface fuels that are not chipped, burned, or otherwise removed from all areas of timber operations within 45 days from the date of commencement of timber operations may be determined to be a nuisance and subject to abatement by the department or the city or county having jurisdiction.~~

~~(ii) The costs incurred by the department, city, or county, as the case may be, to abate the nuisance upon a parcel of land subject to the timber operations, including, but not limited to, investigation, boundary determination, measurement, and other related costs, may be recovered by special assessment and lien against the parcel of land by the department, city, or county. The assessment may be collected at the same time and in the same manner as ordinary ad valorem taxes, and shall be subject to the same penalties and the same procedure and sale in case of delinquency as is provided for ad valorem taxes.~~

1     ~~(4) All timber operations conducted pursuant to this subdivision~~  
2 ~~shall conform to applicable city or county general plans, city or~~  
3 ~~county implementing ordinances, and city or county zoning~~  
4 ~~ordinances. This paragraph does not authorize the cutting, removal,~~  
5 ~~or sale of timber or other solid wood forest products within an area~~  
6 ~~where timber harvesting is prohibited or otherwise restricted~~  
7 ~~pursuant to the rules or regulations adopted by the board.~~

8     ~~(5) (A) The board shall adopt regulations, initially as emergency~~  
9 ~~regulations in accordance with subparagraph (B), that the board~~  
10 ~~considers necessary to implement and to obtain compliance with~~  
11 ~~this subdivision.~~

12     ~~(B) The emergency regulations adopted pursuant to~~  
13 ~~subparagraph (A) shall be adopted in accordance with the~~  
14 ~~Administrative Procedure Act (Chapter 3.5 (commencing with~~  
15 ~~Section 11340) of Part 1 of Division 3 of Title 2 of the Government~~  
16 ~~Code). The adoption of emergency regulations shall be deemed to~~  
17 ~~be an emergency and necessary for the immediate preservation of~~  
18 ~~the public peace, health, and safety, or general welfare.~~

19     ~~(j)~~

20     ~~(i) (1) The harvesting of trees, limited to those trees that~~  
21 ~~eliminate the vertical continuity of vegetative fuels and the~~  
22 ~~horizontal continuity of tree crowns, for the purpose of reducing~~  
23 ~~the rate of fire spread, duration and intensity, fuel ignitability, or~~  
24 ~~ignition of tree crowns.~~

25     ~~(2) The board may authorize an exemption pursuant to paragraph~~  
26 ~~(1) only if the tree harvesting will decrease fuel continuity and~~  
27 ~~increase the quadratic mean diameter of the stand, and the tree~~  
28 ~~harvesting area will not exceed 300 acres.~~

29     ~~(3) Except as provided in paragraph (11), the notice of~~  
30 ~~exemption, which shall be known as the Forest Fire Prevention~~  
31 ~~Exemption, may be authorized only if all of the conditions specified~~  
32 ~~in paragraphs (4) to (10), inclusive, are met.~~

33     ~~(4) A registered professional forester shall prepare the notice~~  
34 ~~of exemption and submit it to the director, and include a map of~~  
35 ~~the area of timber operations that complies with the requirements~~  
36 ~~of paragraphs (1), (3), (4), and (7) to (12), inclusive, of subdivision~~  
37 ~~(x) of Section 1034 of Title 14 of the California Code of~~  
38 ~~Regulations.~~

39     ~~(5) (A) The registered professional forester who submits the~~  
40 ~~notice of exemption shall include a description of the preharvest~~

1 stand structure and a statement of the postharvest stand stocking  
2 levels.

3 (B) The level of residual stocking shall be consistent with  
4 maximum sustained production of high-quality timber products.  
5 The residual stand shall consist primarily of healthy and vigorous  
6 dominant and codominant trees from the preharvest stand. Stocking  
7 shall not be reduced below the standards required by any of the  
8 following provisions that apply to the exemption at issue:

9 (i) Clauses 1 to 4, inclusive, of subparagraph (A) of paragraph  
10 (1) of subdivision (a) of Section 913.3 of Title 14 of the California  
11 Code of Regulations.

12 (ii) Clauses 1 to 4, inclusive, of subparagraph (A) of paragraph  
13 (1) of subdivision (a) of Section 933.3 of Title 14 of the California  
14 Code of Regulations.

15 (iii) Clauses 1 to 4, inclusive, of subparagraph (A) of paragraph  
16 (1) of subdivision (a) of Section 953.3 of Title 14 of the California  
17 Code of Regulations.

18 (C) If the preharvest dominant and codominant crown canopy  
19 is occupied by trees less than 14 inches in diameter at breast height,  
20 a minimum of 100 trees over four inches in diameter at breast  
21 height shall be retained per acre for Site I, II, and III lands, and a  
22 minimum of 75 trees over four inches in diameter at breast height  
23 shall be retained per acre for Site IV and V lands.

24 (6) (A) The registered professional forester who submits the  
25 notice shall include selection criteria for the trees to be harvested  
26 or the trees to be retained. In the development of fuel reduction  
27 prescriptions, the registered professional forester should consider  
28 retaining habitat elements, where feasible, including, but not  
29 limited to, ground level cover necessary for the long-term  
30 management of local wildlife populations.

31 (B) All trees that are harvested or all trees that are retained shall  
32 be marked or sample marked by or under the supervision of a  
33 registered professional forester before felling operations begin.  
34 The board shall adopt regulations for sample marking for this  
35 section in Title 14 of the California Code of Regulations. Sample  
36 marking shall be limited to homogenous forest stand conditions  
37 typical of plantations.

38 (7) (A) The registered professional forester submitting the  
39 notice, upon submission of the notice, shall provide a confidential  
40 archaeology letter that includes all the information required by

1 any of the following provisions that apply to the exemption at  
2 issue:

3 (i) Paragraphs (2) and (7) to (11), inclusive, of subdivision (c)  
4 of Section 929.1 of Title 14 of the California Code of Regulations,  
5 and include site records if required pursuant to subdivision (g) of  
6 that section or pursuant to Section 929.5 of Title 14 of the  
7 California Code of Regulations.

8 (ii) Paragraphs (2) and (7) to (11), inclusive, of subdivision (c)  
9 of Section 949.1 of Title 14 of the California Code of Regulations,  
10 and include site records if required pursuant to subdivision (g) of  
11 that section or pursuant to Section 949.5 of Title 14 of the  
12 California Code of Regulations.

13 (iii) Paragraphs (2) and (7) to (11), inclusive, of subdivision (c)  
14 of Section 969.1 of Title 14 of the California Code of Regulations,  
15 and include site records if required pursuant to subdivision (g) of  
16 that section or pursuant to Section 969.5 of Title 14 of the  
17 California Code of Regulations.

18 (B) The director shall submit a complete copy of the confidential  
19 archaeological letter and two copies of all required archaeological  
20 or historical site records to the appropriate Information Center of  
21 the California Historical Resource Information System within 30  
22 days from the date of notice submittal to the director. Before  
23 submitting the notice to the director, the registered professional  
24 forester shall send a copy of the notice to Native Americans, as  
25 defined in Section 895.1 of Title 14 of the California Code of  
26 Regulations.

27 (8) Only trees less than 18 inches in stump diameter, measured  
28 at eight inches above ground level, may be removed. However,  
29 within 500 feet of a legally permitted structure, or in an area  
30 prioritized as a shaded fuel break in a community wildfire  
31 protection plan approved by a public fire agency, if the goal of  
32 fuel reduction cannot be achieved by removing trees less than 18  
33 inches in stump diameter, trees less than 24 inches in stump  
34 diameter may be removed if that removal complies with this section  
35 and is necessary to achieve the goal of fuel reduction. A fuel  
36 reduction effort shall not violate the canopy closure regulations  
37 adopted by the board on June 10, 2004, and as those regulations  
38 may be amended.

39 (9) (A) This subparagraph applies to areas within 500 feet of  
40 a legally permitted structure and in areas prioritized as a shaded

1 fuel break in a community wildfire protection plan approved by a  
2 public fire agency. The board shall adopt regulations for the  
3 treatment of surface and ladder fuels in the harvest area, including  
4 logging slash and debris, low brush, small trees, and deadwood,  
5 that could promote the spread of wildfire. The regulations adopted  
6 by the board shall be consistent with the standards in the board's  
7 "General Guidelines for Creating Defensible Space" described in  
8 Section 1299.03 of Title 14 of the California Code of Regulations.  
9 Postharvest standards shall include vertical spacing between fuels,  
10 horizontal spacing between fuels, maximum depth of dead ground  
11 surface fuels, and treatment of standing dead fuels, as follows:

12 (i) Ladder and surface fuels shall be spaced to achieve a vertical  
13 clearance distance of eight feet or three times the height of the  
14 postharvest fuels, whichever is the greater distance, measured from  
15 the base of the live crown of the postharvest dominant and  
16 codominant trees to the top of the surface fuels.

17 (ii) Horizontal spacing shall achieve a minimum separation of  
18 two to six times the height of the postharvest fuels, increasing  
19 spacing with increasing slope, measured from the outside branch  
20 edges of the fuels.

21 (iii) Dead surface fuel depth shall be less than nine inches.

22 (iv) Standing dead or dying trees and brush generally shall be  
23 removed. That material, along with live vegetation associated with  
24 the dead vegetation, may be retained for wildlife habitat when  
25 isolated from other vegetation.

26 (B) This subparagraph applies to all areas not described in  
27 subparagraph (A).

28 (i) The postharvest stand shall not contain more than 200 trees  
29 over three inches in diameter per acre.

30 (ii) Vertical spacing shall be achieved by treating dead fuels to  
31 a minimum clearance distance of eight feet measured from the  
32 base of the live crown of the postharvest dominant and codominant  
33 trees to the top of the dead surface fuels.

34 (iii) All logging slash created by the timber operations shall be  
35 treated to achieve a maximum postharvest depth of nine inches  
36 above the ground.

37 (C) The standards required by subparagraphs (A) and (B) shall  
38 be achieved on approximately 80 percent of the treated area. The  
39 treatment shall include chipping, removing, or other methods  
40 necessary to achieve the standards. Ladder and surface fuel

1 treatments, for any portion of the exemption area where timber  
2 operations have occurred, shall be done within 120 days from the  
3 start of timber operations on that portion of the exemption area or  
4 by April 1 of the year following surface fuel creation on that  
5 portion of the exemption area if the surface fuels are burned.

6 (10) Timber operations shall comply with the requirements of  
7 paragraphs (1) to (10), inclusive, of subdivision (b) of Section  
8 1038 of Title 14 of the California Code of Regulations. Timber  
9 operations in the Lake Tahoe region shall comply instead with the  
10 requirements of paragraphs (1) to (16), inclusive, of subdivision  
11 (f) of Section 1038 of Title 14 of the California Code of  
12 Regulations.

13 (11) A notice of exemption, which shall be known as the Forest  
14 Fire Prevention Pilot Project Exemption, may be authorized if all  
15 of the following conditions are met:

16 (A) The conditions specified in paragraphs (2), (4), (6), (7), and  
17 (10) are met.

18 (B) Only trees less than 24 inches in stump diameter, measured  
19 at eight inches above ground level, may be removed. A fuel  
20 reduction effort shall not violate the canopy closure regulations  
21 adopted by the board on June 10, 2004, and as those regulations  
22 may be amended.

23 (C) (i) The registered professional forester who submits the  
24 notice of exemption shall include a description of the preharvest  
25 stand structure and a statement of the postharvest stand stocking  
26 levels.

27 (ii) The level of residual stocking shall be consistent with  
28 maximum sustained production of high-quality timber products.  
29 The residual stand shall consist primarily of healthy and vigorous  
30 dominant and codominant trees from the preharvest stand. Where  
31 present prior to operations, the overstory canopy closure for trees  
32 greater than 12 inches in diameter at breast height shall not be  
33 reduced below 50 percent. Stocking shall be met with the largest  
34 trees available prior to harvest and shall not be reduced below the  
35 standards required by any of the following provisions that apply  
36 to the exemption at issue:

37 (I) Clauses 1 to 4, inclusive, of subparagraph (A) of paragraph  
38 (1) of subdivision (a) of Section 913.3 of Title 14 of the California  
39 Code of Regulations.

(II) Clauses 1 to 4, inclusive, of subparagraph (A) of paragraph (1) of subdivision (a) of Section 933.3 of Title 14 of the California Code of Regulations.

(III) Clauses 1 to 4, inclusive, of subparagraph (A) of paragraph (1) of subdivision (a) of Section 953.3 of Title 14 of the California Code of Regulations.

(iii) If the preharvest dominant and codominant crown canopy is occupied by trees less than 14 inches in diameter at breast height, a minimum of 100 trees over four inches in diameter at breast height shall be retained per acre for Site I, II, and III lands, and a minimum of 75 trees over four inches in diameter at breast height shall be retained per acre for Site IV and V lands. The retained trees shall be the largest trees available prior to harvest.

(D) The activities conducted pursuant to this paragraph occur in the Sierra Nevada Region as defined in subdivision (f) of Section 33302, in Modoc, Siskiyou, or Trinity Counties, or in any combination of these areas.

(E) All activities conducted pursuant to this paragraph occur within the most recent version of the department's Fire Hazard Severity Zone Map in the moderate, high, and very high fire threat zones.

(F) The department shall maintain records regarding the use of the exemption granted in this paragraph in order to evaluate the impact of the exemption on fuel reduction and natural resources in areas where the exemption has been used.

(G) This paragraph shall become inoperative three years after the effective date of regulations adopted by the board implementing this paragraph.

(12) After the timber operations are complete, the department shall conduct an onsite inspection to determine compliance with this subdivision and whether appropriate enforcement action should be initiated.

SEC. 2. Section 4584.1 is added to the Public Resources Code, to read:

4584.1. (a) This chapter shall not apply to the cutting or removal of trees in compliance with Sections 4290 and 4291 that eliminates the vertical continuity of vegetative fuels and the horizontal continuity of tree crowns for the purpose of reducing flammable materials and maintaining a fuel break for a distance of not more than 300 feet on each side from an approved and

1 legally permitted structure that complies with the California  
2 Building Standards Code, when that cutting or removal is  
3 conducted in compliance with this section. For purposes of this  
4 section, an “approved and legally permitted structure” includes  
5 only structures that are designed for human occupancy and garages,  
6 barns, stables, and structures used to enclose fuel tanks.

7 (b) (1) The cutting or removal of trees pursuant to this section  
8 is limited to cutting or removal that will result in a reduction in  
9 the rate of fire spread, fire duration and intensity, fuel ignitability,  
10 or ignition of the tree crowns and shall be in accordance with any  
11 regulations adopted by the board pursuant to this section.

12 (2) Trees shall not be cut or removed pursuant to this section  
13 by the clearcutting regeneration method, by the seed tree removal  
14 step of the seed tree regeneration method, or by the shelterwood  
15 removal step of the shelterwood regeneration method.

16 (c) (1) Surface fuels, including logging slash and debris, low  
17 brush, and deadwood, that could promote the spread of wildfire  
18 shall be chipped, burned, or otherwise removed from all areas of  
19 timber operations within 45 days from the date of commencement  
20 of timber operations pursuant to this section.

21 (2) (A) All surface fuels that are not chipped, burned, or  
22 otherwise removed from all areas of timber operations within 45  
23 days from the date of commencement of timber operations may  
24 be determined to be a nuisance and subject to abatement by the  
25 department or the city or county having jurisdiction.

26 (B) The costs incurred by the department, city, or county, as  
27 the case may be, to abate the nuisance upon a parcel of land subject  
28 to the timber operations, including, but not limited to, investigation,  
29 boundary determination, measurement, and other related costs,  
30 may be recovered by special assessment and lien against the parcel  
31 of land by the department, city, or county. The assessment may  
32 be collected at the same time and in the same manner as ordinary  
33 ad valorem taxes, and shall be subject to the same penalties and  
34 the same procedure and sale in case of delinquency as is provided  
35 for ad valorem taxes.

36 (d) All timber operations conducted pursuant to this section  
37 shall conform to applicable city or county general plans, city or  
38 county implementing ordinances, and city or county zoning  
39 ordinances. This subdivision does not authorize the cutting or  
40 removal of timber or other solid wood forest products within an

1 area where timber harvesting is prohibited or otherwise restricted  
2 pursuant to the rules or regulations adopted by the board.

3 (e) The timber cut and removed pursuant to this section may be  
4 sold by the landowner.

5 (f) (1) The board shall adopt regulations, initially as emergency  
6 regulations in accordance with paragraph (2), that the board  
7 considers necessary to implement and to obtain compliance with  
8 this section.

9 (2) The emergency regulations adopted pursuant to paragraph  
10 (1) shall be adopted in accordance with the Administrative  
11 Procedure Act (Chapter 3.5 (commencing with Section 11340) of  
12 Part 1 of Division 3 of Title 2 of the Government Code). The  
13 adoption of emergency regulations shall be deemed to be an  
14 emergency and necessary for the immediate preservation of the  
15 public peace, health, and safety, or general welfare.

16 SEC. 3. Section 4584.5 of the Public Resources Code is  
17 amended to read:

18 4584.5. Nothing in Section 4584 *or* 4584.1 shall exempt the  
19 owner of any timber harvested from registering with the State  
20 Board of Equalization or from the payment of any applicable timber  
21 yield taxes imposed pursuant to Section 38115 of the Revenue and  
22 Taxation Code.